

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**USDC-SDNY  
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FELICIANO MARTINEZ,

Plaintiff,

v.

CGP ENTERPRISES, INC., d/b/a VILLAGE  
TAVERNA, PETER KAROUNOS,  
GEORGE KAROUNOS, JOHN DOES 1-5,

Defendants.

No. 21-CV-4333 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On May 13, 2021, Plaintiff filed a complaint in this action, and requested an issuance of summons as to defendants CGP Enterprises Inc., Peter Karounos, and George Karounos. Dkts. 1, 3. The next day, a summons was issued for those three defendants. Dkt. 4. On August 12, 2021, Giustino (Justin) Cilenti, counsel for Plaintiff, filed a notice of change of address, which contained a representation that he was still counsel of record for Plaintiff. Dkt. 5. No proof of service has been filed on the docket.

On September 21, 2021, this Court filed an order notifying Plaintiff that the time to serve under the Federal Rules of Civil Procedure appeared to have lapsed, and directed Plaintiff to serve Defendants and file proof of service on the docket before October 21, 2021. Dkt. 6. In the same order, the Court also gave notice that “failure to do so will result in dismissal of the action.” *Id.* Plaintiff has taken no action since that order—there is no indication that Defendants were served, nor did Plaintiff request an extension of the time to serve.


Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—

**must** dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (emphasis added). Here, the Court’s September 21, 2021 order gave notice to Plaintiff that the case would be dismissed. This notice, in turn, gave Plaintiff an opportunity to provide proof of service or argue that there was good cause to further extend the period in which service was due. *Cf. Nagy v. Dwyer*, 507 F.3d 161, 164 (2d Cir.2007).

Accordingly, the Court will dismiss the action without prejudice against all defendants, none of whom were served.

SO ORDERED.

Dated: October 25, 2021  
New York, New York



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Ronnie Abrams  
United States District Judge